

Senate Study Bill 1129 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON COMMERCE BILL BY
CHAIRPERSON McCOY)

A BILL FOR

1 An Act regulating the sale of portable electronics insurance,
2 including by requiring licensure, and providing for fees and
3 penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 522E.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Commissioner*" means the commissioner of insurance.

5 2. "*Customer*" means a person who purchases portable
6 electronics.

7 3. "*Enrolled customer*" means a customer who elects coverage
8 under a portable electronics insurance policy issued to a
9 vendor of portable electronics.

10 4. "*Free trial offer*" means an offer to a customer under
11 which portable electronics insurance is provided free of charge
12 for a limited time period subsequent to which a charge is
13 made to the customer for the insurance without notice to the
14 customer of such charge prior to the expiration of the free
15 trial period.

16 5. "*Location*" means any physical location in this state,
17 or any internet site, call center site, or similar location
18 directed to residents of this state.

19 6. "*Portable electronics*" means electronic devices that
20 are personal, self-contained, easily carried by an individual,
21 battery operated, and used for communication, viewing,
22 listening, recording, gaming, computing, or global positioning,
23 including cell or satellite phones, pagers, personal global
24 positioning satellite units, portable computers, portable
25 audio listening, video viewing, or recording devices, digital
26 cameras, video camcorders, portable gaming systems, docking
27 stations, automatic answering devices, and other similar
28 devices, and the accessories and services related to the use of
29 such devices.

30 7. *a.* "*Portable electronics insurance*" means insurance
31 providing coverage for the repair or replacement of portable
32 electronics which may include coverage against any one or more
33 of the following causes of loss:

34 (1) Property loss.

35 (2) Theft.

1 (3) Inoperability due to mechanical failure.

2 (4) Malfunction.

3 (5) Damage.

4 (6) Other similar causes of loss.

5 *b. "Portable electronics insurance"* does not include any of
6 the following:

7 (1) A service contract or extended warranty providing
8 coverage limited to the repair, replacement, or maintenance
9 of property for the operational or structural failure of the
10 property due to a defect in materials, workmanship, accidental
11 damage from handling power surges, or normal wear and tear.

12 (2) A policy of insurance coverage of a seller's or
13 manufacturer's obligations under a warranty.

14 (3) A homeowner's, renter's, private passenger automobile,
15 commercial multiperil, or similar insurance policy.

16 8. *"Portable electronics transaction"* means any of the
17 following:

18 *a.* The sale or lease of portable electronics by a vendor to
19 a customer.

20 *b.* The sale of a service related to the use of portable
21 electronics by a vendor to a customer.

22 9. *"Supervising entity"* means a business entity that is
23 a licensed insurer or an insurance producer licensed under
24 chapter 522B, that is appointed by an insurer to supervise the
25 administration of a portable electronics insurance program.

26 10. *"Vendor"* means a person in the business of engaging in
27 portable electronics transactions, directly or indirectly.

28 Sec. 2. NEW SECTION. 522E.2 **Licensure of vendors.**

29 1. A vendor shall obtain a portable electronics limited
30 lines insurance license as required under this chapter to
31 sell or offer for sale coverage under a policy of portable
32 electronics insurance.

33 2. A portable electronics limited lines insurance license
34 issued to a vendor pursuant to this chapter authorizes any
35 employee or authorized representative of the vendor to sell or

1 offer coverage under a policy of portable electronics insurance
2 to a customer at each location at which the vendor engages in
3 portable electronics transactions.

4 3. A supervising entity shall maintain a registry of vendor
5 locations that are authorized to sell or solicit portable
6 electronics insurance in this state. Upon request by the
7 commissioner and with ten days' notice to the supervising
8 entity, the registry shall be open to inspection and
9 examination by the commissioner during regular business hours
10 of the supervising entity.

11 4. Notwithstanding any other provision of law to the
12 contrary, a portable electronics limited lines insurance
13 license issued pursuant to this chapter authorizes the licensee
14 and its employees or authorized representatives to engage in
15 those activities that are permitted in this chapter.

16 Sec. 3. NEW SECTION. 522E.3 Requirements for sale of
17 portable electronics insurance.

18 1. At every location where portable electronics insurance
19 is offered to customers, brochures or other written materials
20 that do all of the following shall be made available to
21 prospective customers:

22 a. Disclose that portable electronics insurance may provide
23 a duplication of coverage already provided by the customer's
24 homeowner's insurance policy, renter's insurance policy, or
25 other source of insurance coverage.

26 b. State that enrollment by the customer in a portable
27 electronics insurance program is not required in order to
28 purchase or lease portable electronics.

29 c. Summarize the material terms of the portable electronics
30 insurance coverage including all of the following:

31 (1) The identity of the insurer.

32 (2) The identity of the supervising entity.

33 (3) The amount of any applicable deductible and how it is
34 to be paid.

35 (4) Benefits of the coverage.

1 (5) Key terms and conditions of coverage such as whether
2 portable electronics may be repaired or replaced with similar
3 make and model reconditioned or nonoriginal manufacturer parts
4 or equipment.

5 d. Summarize the process for filing a claim, including
6 a description of how to return portable electronics and the
7 maximum fee applicable in the event the customer fails to
8 comply with any equipment return requirements.

9 e. State that an enrolled customer may cancel enrollment for
10 coverage under a portable electronics insurance policy at any
11 time and the person paying the premium shall receive a refund
12 or credit of any applicable unearned premium.

13 2. The disclosures required pursuant to subsection 1 or the
14 full terms and conditions of portable electronics insurance
15 coverage shall be provided to customers enrolling in such
16 coverage by hand delivery, ordinary mail, or electronic mail,
17 or by directing the customer to an internet site containing
18 such information.

19 3. Portable electronics insurance may be offered on a
20 month-to-month or other periodic basis as a group or master
21 commercial inland marine policy issued to a vendor for its
22 enrolled customers.

23 4. Portable electronics insurance shall not be sold through
24 a free trial offer.

25 5. The commissioner of insurance shall establish
26 eligibility and underwriting standards for customers electing
27 to enroll in coverage for each portable electronics insurance
28 program.

29 Sec. 4. NEW SECTION. 522E.4 Authority of vendors.

30 1. The employees and authorized representatives of a vendor
31 may sell or offer portable electronics insurance to customers
32 and shall not be subject to licensure under this chapter or as
33 an insurance producer under chapter 522B provided that all of
34 the following requirements are met:

35 a. The vendor obtains a portable electronics limited lines

1 insurance license that authorizes the vendor's employees
2 or authorized representatives to sell or offer portable
3 electronics insurance pursuant to this chapter.

4 *b.* The insurer issuing the portable electronics insurance
5 either directly supervises the administration of the portable
6 electronics insurance program or appoints a supervising entity
7 to supervise the administration of the program, including
8 development of a training program for employees and authorized
9 representatives of the vendor. The training required by this
10 paragraph shall comply with all of the following requirements:

11 (1) The training shall be delivered to employees and
12 authorized representatives of a vendor who are directly engaged
13 in the activity of selling or offering for sale portable
14 electronics insurance.

15 (2) The training may be offered in electronic form.
16 However, if the training is conducted in electronic form, the
17 supervising entity shall implement a supplemental education
18 program for employees and authorized representatives of
19 the vendor regarding the portable electronics insurance
20 product that is conducted and overseen by an employee of the
21 supervising entity who is an insurance producer licensed under
22 chapter 522B.

23 (3) Each employee and authorized representative of a vendor
24 shall receive basic instruction about the portable electronics
25 insurance offered to customers and the disclosures required
26 under section 522E.3.

27 *c.* A vendor or an authorized representative shall maintain
28 a list of all employees or authorized representatives of each
29 vendor who are authorized to sell or offer portable electronics
30 insurance to customers under this section. Upon request by
31 the commissioner, and with ten days' notice to the vendor
32 or supervising entity, the list maintained shall be open to
33 inspection and examination by the commissioner during normal
34 business hours of the vendor or supervising entity.

35 *d.* An employee or authorized representative of a vendor

1 shall not advertise, represent, or otherwise hold the employee
2 or authorized representative out as being a licensed insurance
3 producer under chapter 522B.

4 2. *a.* Charges for portable electronics insurance coverage
5 may be billed and collected by the vendor. Any charge to an
6 enrolled customer for coverage that is not included in the cost
7 associated with the purchase or lease of portable electronics
8 shall be separately itemized on the enrolled customer's bill.
9 If the portable electronics insurance is included with the
10 purchase or lease of portable electronics, the vendor shall
11 clearly and conspicuously disclose to the enrolled customer
12 that the portable electronics insurance is included with the
13 portable electronics.

14 *b.* A vendor that bills and collects charges for portable
15 electronics insurance shall not be required to maintain such
16 funds in a segregated account provided that the vendor is
17 authorized by the insurer to hold such funds in an alternative
18 manner and remits such amounts to the supervising entity within
19 sixty days of receipt.

20 *c.* All funds received by a vendor from an enrolled customer
21 for the purchase of portable electronics insurance shall be
22 considered funds held in trust by the vendor in a fiduciary
23 capacity for the benefit of the insurer. A vendor may receive
24 compensation for billing and collection services.

25 Sec. 5. NEW SECTION. **522E.5 Penalties — suspension or**
26 **revocation of license.**

27 If a vendor or the vendor's employee or authorized
28 representative violates any provision of this chapter, the
29 commissioner may do any of the following:

30 1. After notice and hearing, impose penalties not to exceed
31 five hundred dollars per violation or five thousand dollars in
32 the aggregate for such violations.

33 2. After notice and hearing, take other affirmative action
34 that the commissioner deems necessary and reasonable to carry
35 out the purposes of this chapter, including the following:

1 *a.* Suspend the privilege of selling or offering for sale
2 portable electronics insurance pursuant to this chapter at
3 specific business locations where violations of this chapter
4 have occurred.

5 *b.* Suspend or revoke the ability of an individual employee
6 or authorized representative to sell or offer for sale portable
7 electronics insurance pursuant to the portable electronics
8 limited lines insurance license of a vendor.

9 Sec. 6. NEW SECTION. **522E.6 Termination of portable**
10 **electronics insurance.**

11 Notwithstanding any other provision of law to the contrary:

12 1. An insurer may terminate or otherwise change the terms
13 and conditions of a policy of portable electronics insurance
14 only upon providing the vendor and enrolled customers with at
15 least thirty days' notice of such termination or change.

16 2. If the insurer changes the terms and conditions of a
17 policy of portable electronics insurance, the insurer shall
18 provide the vendor with a revised policy or endorsement and
19 each enrolled customer with a revised certificate, endorsement,
20 updated brochure, or other evidence indicating that a change in
21 the terms and conditions of the policy has occurred along with
22 a summary of material changes.

23 3. Notwithstanding subsection 1, an insurer may terminate
24 an enrolled customer's enrollment under a portable electronics
25 insurance policy with fifteen days' notice upon discovery of
26 fraud or material misrepresentation in obtaining coverage or in
27 the presentation of a claim under that coverage.

28 4. Notwithstanding subsection 1, an insurer may immediately
29 terminate an enrolled customer's enrollment under a portable
30 electronics insurance policy for any of the following reasons:

31 *a.* Nonpayment of premium.

32 *b.* If the enrolled customer ceases to have active service
33 with the vendor.

34 *c.* If the enrolled customer exhausts the aggregate limit of
35 liability, if any, under the terms of the portable electronics

1 insurance policy and the insurer sends notice of termination to
2 the enrolled customer within thirty days after exhaustion of
3 the limit. However, if notice is not timely sent, enrollment
4 shall continue notwithstanding the aggregate limit of liability
5 until the insurer sends notice of termination to the enrolled
6 customer.

7 5. If a portable electronics insurance policy is terminated
8 by a vendor, the vendor shall mail or deliver written notice
9 to each enrolled customer advising the enrolled customer
10 of the termination of the policy and the effective date of
11 termination. The written notice shall be mailed or delivered
12 to the enrolled customer at least thirty days prior to the
13 termination.

14 6. a. Whenever notice or correspondence with respect to a
15 policy of portable electronics insurance is required pursuant
16 to this section or is otherwise required by law, the notice
17 or correspondence shall be in writing and sent within the
18 notice period, if any, specified in the statute or regulation
19 requiring the notice or correspondence.

20 b. Notwithstanding any other provision of law to the
21 contrary, notices and correspondence may be sent by mail or by
22 electronic means as set forth in this lettered paragraph "b".

23 (1) If the notice or correspondence is sent by mail, it
24 shall be sent to the vendor at the vendor's mailing address
25 specified for such purpose and to the affected enrolled
26 customers at their last known mailing addresses on file with
27 the insurer. The insurer or vendor, as the case may be, shall
28 maintain proof of mailing in a form authorized or accepted
29 by the United States postal service or other commercial mail
30 delivery service.

31 (2) If the notice or correspondence is sent by electronic
32 means, it shall be sent to the vendor at the vendor's
33 electronic mail address specified for such purpose and to the
34 affected enrolled customers at their last known electronic mail
35 address as provided by each enrolled customer to the insurer or

1 vendor, as the case may be. For purposes of this subparagraph,
2 an enrolled customer's provision of an electronic mail address
3 to an insurer or vendor shall be deemed consent to receive
4 notices and correspondence by electronic means. The insurer or
5 vendor, as the case may be, shall maintain proof that a notice
6 or correspondence was sent by electronic means to an enrolled
7 customer.

8 7. Notice or correspondence required by this section or
9 otherwise required by law may be sent on behalf of an insurer
10 or vendor, as the case may be, by the supervising entity
11 appointed by the insurer.

12 Sec. 7. NEW SECTION. 522E.7 Application for license —
13 fees.

14 1. If a vendor is selling or offering to sell or will
15 sell or offer to sell portable electronics insurance in this
16 state, the vendor shall submit a sworn application for a
17 portable electronics limited lines insurance license to the
18 commissioner on an application form prescribed and furnished by
19 the commissioner.

20 2. The application form shall include the following
21 information:

22 a. The name, residence address, and other information
23 required by the commissioner for an employee or officer of
24 the vendor that is designated by the vendor as the person
25 responsible for or who will be responsible for the vendor's
26 compliance with the requirements of this chapter. However, if
27 the vendor derives more than fifty percent of its revenue from
28 the sale of portable electronics insurance, the information
29 required in this paragraph shall be provided for all officers,
30 directors, and shareholders of record of the vendor that have
31 beneficial ownership in the vendor of ten percent or more of
32 any class of securities registered under federal securities
33 law.

34 b. Provide the location of the vendor's home office.

35 3. Any vendor engaging in the sale of or offering for sale

1 portable electronics insurance on or before July 1, 2013,
2 shall apply for licensure under this chapter within ninety
3 days of the application form being made available by the
4 commissioner. Any vendor commencing operations in this state
5 after July 1, 2013, shall obtain a portable electronics limited
6 lines insurance license prior to selling or offering for sale
7 portable electronics insurance.

8 4. Initial portable electronics limited lines insurance
9 licenses issued pursuant to this chapter shall be valid for a
10 period of twenty-four months and shall expire on March of the
11 renewal year assigned by the commissioner.

12 5. Each vendor licensed under this chapter shall pay to the
13 commissioner a fee as prescribed by the commissioner by rule,
14 but in no event shall the fee exceed one thousand dollars for
15 an initial portable electronics limited lines insurance license
16 or five hundred dollars for each renewal of the license.
17 However, for a vendor that engages in portable electronics
18 transactions at ten or fewer locations in the state, the fee
19 shall not exceed one hundred dollars for an initial license and
20 one hundred dollars for each renewal of the license.

21 Sec. 8. NEW SECTION. 522E.8 Rules.

22 The commissioner shall adopt rules pursuant to chapter 17A
23 as necessary to implement and administer the provisions of this
24 chapter.

25 EXPLANATION

26 This bill regulates the sale of portable electronics
27 insurance in new Code chapter 522E by requiring licensure,
28 and providing for fees and penalties. "Portable electronics"
29 are electronic devices that are personal, self-contained,
30 easily carried by an individual, battery operated, and used
31 for communication, viewing, listening, recording, gaming,
32 computing, or global positioning, including cell or satellite
33 phones, pagers, personal global positioning satellite units,
34 portable computers, portable audio listening, video viewing, or
35 recording devices, digital cameras, video camcorders, portable

1 gaming systems, docking stations, automatic answering devices,
2 and other similar devices, and the accessories and services
3 related to the use of such devices.

4 "Portable electronics insurance" is insurance that provides
5 coverage for the repair or replacement of portable electronics
6 including various causes of loss. "Portable electronics
7 insurance" does not include a service contract or extended
8 warranty, a seller's or manufacturer's warranty obligations,
9 or other insurance such as homeowner's, renter's, automobile,
10 or commercial multiperil insurance. Vendors of portable
11 electronics sell or offer for sale such insurance pursuant
12 to a policy issued to the vendor by an insurer that offers
13 such coverage. The bill applies to vendors that have physical
14 locations in the state, as well as any internet site, call
15 center site, or similar location directed to residents of this
16 state.

17 Vendors are required to obtain a portable electronics
18 limited lines insurance license as required under new Code
19 chapter 522E to sell or offer for sale coverage under a
20 portable electronics insurance policy. Such a license
21 issued to a vendor authorizes any employee or authorized
22 representative of the vendor to sell or offer the insurance
23 coverage at each location in the state where the vendor
24 sells portable electronics. A "supervising entity" that is
25 a licensed insurer or licensed insurance producer under Code
26 chapter 522B must maintain a registry of vendor locations at
27 which portable electronics insurance is sold or solicited that
28 is available for inspection by the commissioner of insurance.

29 Vendors that sell portable electronics insurance are
30 required to offer written materials to customers that disclose
31 certain specified information about the insurance that is being
32 offered. Such insurance may be offered on a month-to-month
33 or other periodic basis. The disclosures contained in the
34 written materials must be offered to persons enrolling in
35 portable electronics coverage by hand delivery, ordinary

1 mail, or electronic mail, or by directing the customer to an
2 internet site containing the information. Portable electronics
3 insurance cannot be sold through a free trial offer. A
4 "free trial offer" is an offer to provide such insurance to a
5 customer free of charge for a limited time period subsequent
6 to which a charge is made to the customer without notice prior
7 to expiration of the free trial period. Eligibility and
8 underwriting standards must be established for each portable
9 electronics insurance program by the commissioner of insurance.

10 Employees and authorized representatives of a vendor may
11 sell or offer portable electronics insurance to customers
12 and are not subject to licensure under new Code chapter
13 522E or Code chapter 522B if certain training and oversight
14 requirements are met by the insurer and the supervising
15 entity appointed by the insurer. A vendor or an authorized
16 representative is required to maintain a list of all employees
17 or authorized representatives of the vendor who are authorized
18 to sell or offer portable electronics insurance to customers.
19 The list must be available for inspection and examination
20 during the vendor's normal business hours by the commissioner
21 of insurance upon 10 days' notice.

22 A vendor may bill and collect charges for portable
23 electronics insurance and be paid for doing so but is
24 considered to hold any funds collected in trust for the
25 insurer.

26 The commissioner of insurance may subject a vendor or the
27 vendor's employees or authorized representatives to penalties
28 for violations of the Code chapter not to exceed \$500 per
29 violation or \$5,000 in the aggregate. The commissioner may
30 also suspend the vendor's privilege of selling the insurance
31 at specific locations of the vendor or suspend or revoke
32 the selling privileges of a specific employee or authorized
33 representative of a vendor.

34 An insurer cannot terminate or otherwise change the terms of
35 a portable electronics insurance policy without giving notice

1 to the vendor and enrolled customers as provided in the bill.
2 Notice may be sent in writing by mail or by electronic means.

3 A vendor who is selling or offering to sell or will sell
4 or offer to sell portable electronics insurance in this state
5 must submit a sworn application for a portable electronics
6 limited lines insurance license to the commissioner. A vendor
7 who is engaging in the sale of such insurance on or before the
8 effective date of the bill must apply for a license within
9 90 days of the date the application form is made available
10 by the commissioner of insurance. Any vendor that commences
11 operations in the state after the effective date of the bill
12 must obtain a license prior to selling or offering for sale
13 portable electronics insurance.

14 Portable electronics limited lines insurance licenses shall
15 be valid for 24 months and shall not exceed \$1,000 for an
16 initial license or \$500 for a renewal of the license, except
17 that if a vendor has 10 or fewer locations in the state, the
18 license cost shall not exceed \$100 for an initial license and
19 for each renewal of the license.

20 The commissioner of insurance is required to adopt rules
21 pursuant to Code chapter 17A to implement and administer the
22 provisions of the bill.